

FEDERAL CIRCUIT COURT OF AUSTRALIA

*IBRAHIM v MINISTER FOR IMMIGRATION &
ANOR*

[2017] FCCA 1766

Catchwords:

MIGRATION – Administrative Appeals Tribunal – application for a Partner Residence (Class BS) (Subclass 801) visa – the Tribunal complied with its statutory requirements under s.359A of the Migration Act – the Tribunal provided clear particulars of the information to the applicant – the Tribunal was not required to provide the whole of the content of the communication nor to give particulars of the whole document – no jurisdictional error identified – further amended application dismissed.

Legislation:

Migration Act 1958 (Cth), ss. 5F, 359A, 359AA, 476

Migration Regulations 1994, reg.1.15A, cl.801.221, cl.801.226 of Schedule 2, cl.4020 of Schedule 4.

Applicant:	MAHMOUD IBRAHIM
First Respondent:	MINISTER FOR IMMIGRATION & BORDER PROTECTION
Second Respondent:	ADMINISTRATIVE APPEALS TRIBUNAL
File Number:	SYG 3258 of 2016
Judgment of:	Judge Street
Hearing date:	28 July 2017
Date of Last Submission:	28 July 2017
Delivered at:	Sydney
Delivered on:	7 August 2017

REPRESENTATION

Counsel for the Applicant: Mr D Godwin
On a direct access basis

Counsel for the Respondents: Mr M Smith

Solicitors for the Respondents: Mills Oakley Lawyers

ORDERS

- (1) The further amended application is dismissed.
- (2) The Applicant pay the First Respondent's costs fixed in the amount of \$5,500.00.
- (3)
- (4)
- (5)

FEDERAL CIRCUIT COURT

OF AUSTRALIA

AT SYDNEY

SYG 3258 of 2016

MAHMOUD IBRAHIM

Applicant

And

MINISTER FOR IMMIGRATION & BORDER PROTECTION

First Respondent

ADMINISTRATIVE APPEALS TRIBUNAL

Second Respondent

REASONS FOR JUDGMENT

Background

1. This is an application for a Constitutional writ within the Court's jurisdiction under s.476 of the *Migration Act 1958* (Cth) ("the Migration Act") in respect of a decision of the Administrative Appeals Tribunal ("the Tribunal") made on 2 November 2016 affirming the decision of the delegate not to grant the applicant a Partner Residence (Class BS) (Subclass 801) visa.
2. The applicant is a citizen of Egypt and applied for the partner visa on 18 June 2013 on the basis of a relationship with his sponsor, Ms Jana El-Etri.

The Tribunal

3. The Tribunal identified that the delegate had refused to grant the visa on the basis that the applicant did not satisfy the requirements of cl.801.226 of Schedule 2 to the *Migration Regulations 1994* (“the Migration Regulations”) because the applicant had provided, or caused to be provided, false or misleading information to the Department and that there were not compelling circumstances for waiving the criteria.
4. The Tribunal identified the applicant’s background and the background of the sponsor. The Tribunal noted that the applicant’s applications stated that the parties commenced a shared life together to the exclusion of all others and married on 15 May 2013. At the time of the application the applicant provided a number of documents in support of the application. That included a statement by the sponsor dated 28 March 2014. The applicant was granted a Provisional Partner (Subclass 820) visa on 7 August 2014.
5. **Information provided by the sponsor via email dated 28 October 2014**
6. The Tribunal identified the background to the application for review as well as the applicant’s background. In referring to the applicant’s background, the Tribunal referred to the sponsor’s provision of information on 28 October 2014 that the sponsor wished to withdraw her sponsorship for a partner visa, that the applicant had offered to give her \$30,000.00 if she married him so that he could get Australian citizenship, that their marriage was not real, that the applicant and sponsor at no stage lived together at the same address, that the applicant and the sponsor only met on four or five occasions and that the applicant used these occasions to take photographs of the two of them together.
7. The Tribunal made reference to the sponsor alleging that she remained in a relationship with her ex-husband and has three children with him, and that the applicant is still in a relationship with an ex-wife in Egypt. The Tribunal noted that the sponsor departed Australia on 31 October 2014 and has not returned.

8. Letter dated 10 June 2015 inviting the applicant to comment on information

9. The Department wrote to the applicant on 10 June 2015 inviting him to comment on the information that was provided by the sponsor on 28 October 2014, that the applicant had provided false or misleading information to the Department. The letter dated 10 June 2015 stated that the sponsor had provided information that they entered into a contrived relationship for the purpose of gaining entry into Australia, that the applicant and sponsor never lived together, that the applicant had only seen the sponsor on four or five occasions and that there was a proposition that the applicant would give the sponsor \$30,000.00 if granted Australian citizenship.
10. The letter to the applicant dated 10 June 2015 also noted that the sponsor stated that the applicant was not divorced and that the applicant has a wife that lives in Egypt. That letter also noted that the sponsor stated that she was not a widow, that the sponsor had divorced 10 years ago and is still in a relationship with her former husband and has two children and that she travelled to Syria to visit her husband and family.

11. Applicant's response to the information dated 24 June 2015

12. The applicant provided a letter dated 24 June 2015 in response to the Department's letter. That response sought to deny the information provided and asserted that the sponsor and the applicant lived together and that they had experienced a lot of problems. The response provided that he had tried to save the marriage. The applicant alleged that some terrible events occurred that the sponsor was involved in, that the sponsor had stolen his laptop and he put in a police report, and that she then left Australia in November 2014 and stole a passport from a travel agent in Lakemba and that the matter was reported to the police.
13. The applicant made reference to the sponsor being on medication and asserted that she came back and they lived together happily until September 2014 when she said she wanted to visit her children in Turkey and not Syria. The letter asserted that the sponsor originally told him that she is a widow and the applicant totally denied the

amount of \$30,000.00 and asserted her behaviour made him sick. The letter asserted that the sponsor's behaviour was not normal and said:

"I appreciate if I can have a look at her statement mentioned in your invitation to comment."

14. The letter made reference to the sponsor's statement of over 20 pages and maintained that the relationship was genuine.

15. Information provided by the sponsor via email on 2 July 2015

16. The Tribunal also referred to information being provided to the Department on 2 July 2015 in which the sponsor informed the Department that her and the applicant's marriage is a fake marriage, that she married the applicant for money and that the applicant so far had paid the sponsor \$3,000.00 with the agreement more would be paid if the applicant got Australian citizenship. The sponsor noted she is already married and has a nine month old baby from her real husband.

17. The sponsor said she is not in Australia and the sponsor alleged that the applicant contacted her overseas and told her that he had received a letter from the Department and that the applicant had asked her to lie and say that she was upset with him because he did not travel with her when she left Australia. The sponsor alleged that she filled out the document for the applicant because of threats he made to her. The sponsor alleged that the applicant had put her name and address on a bank account and other things and that they never lived together in Australia.

18. The hearing before the Tribunal

19. The applicant appeared at the hearing on 4 October 2016 to give evidence and present arguments. Following the hearing, the applicant was given until 18 October 2016 to provide further submissions or evidence before the making of the decision.

20. The material provided by the applicant on 20 September 2016 maintained that their relationship was genuine, that they had lived together contrary to the letter from the sponsor written on 28 October 2014 that they entered into a contrived relationship and that the

applicant would give the sponsor \$30,000.00 if she supported the applicant.

21. The letter dated 20 September 2016 from the applicant stated:

“Her statement is totally untrue and not genuine but it is up to the Department now and to the Tribunal to accept that my partner is suffering psychological problem and her mind is not sound as can be seen from the information which she provided to the Department on various occasions.”

22. The letter from the applicant also asserted that the applicant became the victim of domestic violence allegedly at the hands of the sponsor and was hoping that the sponsor would recover. The letter from the applicant maintained that the parties genuinely lived together in a genuine relationship.

23. The Tribunal identified what occurred at the hearing and relevantly, summarised what occurred in relation to the provision of clear particulars under s.359AA of the Migration Act as follows:-

53. The Tribunal put the following information to Mr Ibrahim, explaining to him that under the Migration Act, the Tribunal is required to invite him to comment on or respond to certain information which the Tribunal considers would, subject to his comment or response, be the reason, or part of the reason, for affirming that decision under review

Issue 1

During the hearing you told the Tribunal you were genuine relationship with Ms EI-Etri at the time you lodged your application for a partner visa on 18 June 2013. This is consistent with the evidence you provided the Department of Immigration and Border Protection in June 2013 with your visa application.

Whereas

Ms EI-Etri contacted the Department of Immigration and Border Protection on 28 October 2014 and advised them:

- she wished to withdraw her sponsorship in relation to your application for a partner visa;*
- you offered to give her \$30,000 if she married you so that you could get Australian citizenship;*

- *your marriage was not real*
- *you and Ms EI-Etri at no stage lived together at the same address;*
- *you and Ms EI-Etri only met on 4-5 occasions and you used these occasions to take photographs of the two of you together; .*
- *Ms EI-Etri remained in a relationship with her ex-husband and has three children with him, a girl aged 3, a boy aged 1 and a 2 month old baby;*
- *you are still in a relationship with your ex-wife in Egypt;*

This information is relevant because it appears to be inconsistent with your evidence to the Tribunal that you were in a genuine relationship with Ms EI-Etri at the time you lodged your application for a Partner visa in October 2013.

If the Tribunal relies on the information provided by Ms EI-Etri it may find that you provided the Department of Immigration and Border Protection with false or misleading information about your relationship with Ms EI-Etri in October 2013.

Issue 2

In June 2015 you provided the Department of Immigration and Border Protection with statutory declarations and other evidence from Ms EI-Etri in which she states you are in a genuine relationship. This is consistent with information contained in a letter from you to the Department of Immigration and Border Protection dated 24 June 2015.

Whereas

Ms EI-Etri contacted the Department of Immigration and Border Protection on 2 July 2015 and advised them: ·

- *your marriage to her is a fake marriage;*
- *she married you for money and you have so far paid her \$3,000, with the agreement more would be paid if you got Australian citizenship;*
- *she is already married and has a 9 montl] old baby from her real husband;*
- *she is not in Australia;*

- *you contacted her overseas and told her you had received a letter from DIBP and you told her to lie and say she was upset with you because you did not travel with her when she left Australia;*
- *she filled out the document you wanted from her because of threats you made to her;*
- *whilst you may have put her name and address on some bank account and other things you never lived together in Australia.*

The inconsistency in the evidence suggests that Ms EI-Etri and you were at no stage in a genuine relationship and she has said the information in statements and declarations she made in June 2015 were not truthful.

This information is relevant because it appears to be inconsistent with your evidence to the Tribunal that you were in a genuine relationship with Ms EI-Etri at the time you lodged your application for a Partner visa in October 2013.

If the Tribunal relies on the information provided by Ms EI-Etri it may find that you provided the Department of Immigration and Border Protection with false or misleading information about your relationship with Ms EI-Etri in October 2013.

54. Mr Ibrahim did not request any further time to make comments or respond to the particulars of information put to him pursuant to section 359M of the Act. In relation to this information, Mr Ibrahim made the following comments:

- *any inconsistency in information provided to the Department was information*

provided by Ms EI-Etri and not him;

- *she is the one who said she was a widow;*
- *he did not provide any information to the Department that was wrong;*
- *he could not have threatened her because she is not in Australia;*

24. Consideration of the applicant's credibility

25. The Tribunal found that the applicant's response did not adequately explain why the Tribunal should disregard the information regarding

the contrived nature of the parties' relationship which had been provided to the Department on two separate occasions, being the email dated 28 October 2014 and the second email to the Department on 2 July 2015.

26. The Tribunal noted that the communications on the two occasions acknowledged that the information was inconsistent with what the sponsor had otherwise provided to the Department. The Tribunal made reference to the sponsor retracting her statements that she was a widow and the statement that the sponsor is in a relationship with her ex-husband who is the father of her three children, the youngest being born in or around September 2015.
27. The applicant alleged he could not have threatened the sponsor in or around June or July as she was not in Australia at the time. In the email, the sponsor stated that the applicant interacted with her and threatened her by telephone and text messages, after the Department sought the applicant's comment about the information she disclosed in her email to the Department dated 28 October 2014. The Tribunal said it could see no reason why threats could not potentially be made to the sponsor through these electronic mediums.
28. The Tribunal found that whether or not the sponsor was honest to the applicant or not, any communication that the sponsor had with the Department regarding the contrived nature of the relationship was not determinative of the applicant's contention that the parties' relationship was at all times genuine rather than a contrived relationship in which the sponsor was paid to pretend to be in a relationship with the applicant and facilitate his migration to Australia and acquisition of Australian citizenship.
29. The Tribunal did not accept the documentary evidence regarding the parties' shared residential address in and of itself provided a reason for the Tribunal to disregard the sponsor's claims that the parties were in a contrived relationship. The Tribunal made reference to the email dated 2 July 2015 in which the sponsor told the Department her name was put on to the rental lease and bank account along with the applicant's but that they had at no stage lived together.

30. The Tribunal was not satisfied that the applicant had provided a coherent reason why the sponsor's claim that they had at no stage actually lived together should be disregarded. The Tribunal did not accept the suggestion that the sponsor's credit should be rejected because she had only received part of the payment for pretending to be in a relationship with the applicant. The Tribunal did not accept the applicant's contention that the Tribunal should disregard the information contained in the emails dated 28 October 2014 and 2 July 2015.
31. The Tribunal identified that, when considered as a whole, the Tribunal had serious concerns with regard to the weight that can be given to information provided by the applicant in his visa application and subsequent statements provided to the Department and the Tribunal and in his oral evidence during the hearing. The Tribunal did not accept the applicant to be a credible witness and found that he is willing to provide false information to the Department and the Tribunal in order to support his application.
- 32. Consideration of the existence of a spousal or de facto relationship**
33. The Tribunal proceeded to consider the requirements for determining whether the applicant was the spouse of the sponsoring partner and referred to the requirements of s.5F of the Migration Act and reg.1.15A(3) of the *Migration Regulations 1994* ("the Migration Regulations"). The Tribunal accepted the parties were married on 15 May 2013.
- 34. Financial aspects**
35. In relation to the financial relationships, the Tribunal was not satisfied that at the time the applicant applied for a Partner visa on 18 June 2013, or at any other time, the financial circumstances of the applicant and the sponsor indicated they were in a genuine and continuing relationship.
- 36. Household**
37. In relation to the household, the Tribunal was not satisfied that there was evidence before it that the parties have at any stage established a

household together which would be expected if the parties were in a genuine, continuing and exclusive relationship.

38. *Social aspects*

39. In relation to the social aspects, the Tribunal found that the evidence did not support a finding that the parties were at any stage in an exclusive relationship or that their relationship was genuine and continuing.

40. *Commitment to each other*

41. In relation to commitment to each other, the Tribunal was not satisfied the parties displayed any commitment to each other which would indicate the parties were in a genuine and continuing relationship at the time of application, or at any subsequent time.

42. *Findings in respect of the relationship*

43. The Tribunal found the overwhelming weight of the evidence indicates the parties were not in a genuine and continuing relationship at the time of the application. The Tribunal was not satisfied the parties had, or have a mutual commitment to a shared life as husband and wife to the exclusion of all others.

44. The Tribunal was not satisfied that at the time of the decision the parties were or are in a spousal relationship and found the applicant failed to meet the criteria under cl.801.221(2)(c) of the Migration Regulations. The Tribunal found that the applicant failed to meet the criteria for the granting of a visa.

45. *Consideration of Public Interest Criterion 4020*

46. The Tribunal turned to the issue of Public Interest Criterion 4020 (PIC 4020) of Schedule 4 to the Migration Regulations. The Tribunal found that the relationship between the applicant and the sponsor was contrived and found that the applicant gave false and misleading information to the Department.

47. The Tribunal found the applicant did not meet the criteria under cl.4020(1) of the Migration Regulations and found that there were not compelling or compassionate circumstances for the waiver of that

criteria for the requirements of cl.4020(1) of the Migration Regulations and affirmed the decision under review.

Before this Court

48. The grounds in the amended application are as follows:-

1. The Second Respondent failed comply with s 359A(1)(a) of the Migration Act 1958

Particulars

Tribunal did not inform the applicant that the following information would be a reason or part of a reason for affirming the delegate's decision

(i) the information in the email from the applicant's wife to the Department of 28 October 2014 that:

'he put my address with him'

'I am even traveling for 6 weeks to my husband on Friday'

'the lowyer made me sign so they can give me the 10 grand first'

'Mahmoud put my name in the electricity'

'he did a little lie party in photos'

'he told me dont worry imgration wont now about your kids''

he told me say your a widow and will get the death paper'

'a frouds one this paper a frouds I was never a widow'

'I dont know this person at all it was a business marriage'

'he told me and lied to me and said that it was ok in Australia to do this'

'I have been ten years divorced and now married again from my real husband''

'even the 20 pages that I wroute he paid me for it and told me to do it and I started coping it from the internet all lies''

“all I love is my husband”

"I wanna stop the case and get him out of my name and take him to famely court and tell them the truth so that I can devorce him"

"witch I was never married to him"

"I am traveling on Friday so I can do something to get my real husband the father of the kids to live with me in Australia"

"I hate him sooooo much"

(ii) the information in the email from the applicant's wife to the Department of 2 July 2015 that;

"I just have my address ther so yous can believe and the bank account"

"he doesnt know my phone number"

"we talk through emails"

2. The Tribunal's exercise of power miscarried as it required the applicant to provide "conclusive evidence" to establish the applicant was the spouse of the sponsor In so doing the Tribunal misunderstood its Statutory function and its decision was legally unreasonable.

(All errors in the original)

Consideration

49. Ground 1

50. In relation to ground 1, Mr Godwin of counsel took the Court carefully through the Tribunal's decision and the email dated 28 October 2014, as well as the record of the purported email which was a Department report dated 2 July 2015.

51. Mr Godwin of counsel sought to emphasise the information that was omitted from the clear particulars in respect of the email dated 28 October 2014 as well as the information omitted from the record dated 2 July 2015. Mr Godwin of counsel submitted that this was a case in which the applicant should have been provided with the whole of the email.

52. Section 359AA of the Migration Act does not require the whole of the information to be provided for compliance with the statutory

requirements. Nor does the provision require particulars of the whole document or all information that could or might undermine, negate or contradict the applicant's claims. It is the information that the Tribunal considers would be the reason or part of the reason for affirming the decision under review that must be the subject of clear particulars. It is for the Tribunal to consider what information would be the reason or part of the reason for affirming the decision under review and that must be objectively considered in light of information that would undermine, negate or contradict the applicant's claims.

53. Section 359AA of the Migration Act provides as follows:-

(1) If an applicant is appearing before the Tribunal because of an invitation under section 360:

(a) the Tribunal may orally give to the applicant clear particulars of any information that the Tribunal considers would be the reason, or a part of the reason, for affirming the decision that is under review; and

(b) if the Tribunal does so--the Tribunal must:

(i) ensure, as far as is reasonably practicable, that the applicant understands why the information is relevant to the review, and the consequences of the information being relied on in affirming the decision that is under review; and

(ii) orally invite the applicant to comment on or respond to the information; and

(iii) advise the applicant that he or she may seek additional time to comment on or respond to the information; and

(iv) if the applicant seeks additional time to comment on or respond to the information--adjourn the review, if the Tribunal considers that the applicant reasonably needs additional time to comment on or respond to the information.

(2) A reference in this section to affirming a decision that is under review does not include a reference to the affirmation of a decision that is taken to be affirmed under subsection 362B(1F).

54. I accept the submissions of the first respondent, that the clear particulars of the information provided on 28 October 2014, and that the clear particulars of the information provided on 2 July 2015, were provided to the applicant were in compliance with the requirements under s.359AA of the Migration Act. I do not accept that there was any failure to comply with s.359AA of the Migration Act by the Tribunal in the conduct of the hearing in respect of the information provided by the letter dated 28 October 2014 and an email dated 2 July 2015.
55. Whilst it is apparent in response to the delegate's letter that the applicant made a request for the whole of the email of 28 October 2014, it is not apparent that any such issue was further pursued by the applicant before the Tribunal. No denial of procedural fairness to the applicant occurred in the conduct of the review by reason of the failure to provide the applicant with the email dated 28 October 2014 or the jobs detail record dated 2 July 2015 because the substance of those documents was sufficiently put to the applicant by the Tribunal in the course of the hearing. The substance of the letter dated 10 June 2015 by the delegate also discloses the substance of the communication dated 28 October 2014 and the applicant had an opportunity to respond and did respond to the same.
56. Mr Godwin of counsel submitted that the applicant was denied the opportunity of being able to identify, that part of the information in the email dated 28 October 2014 which refer to the applicant's lawyer not being truthful and that the applicant's lawyer made the applicant sign. That is not information of itself that undermines, contradicts or negates to applicant's claims.
57. The clear particulars provided by the Tribunal were of the information that the Tribunal considered would be the reason or part of the reasons for affirming the decision under review, namely that the applicant was not in a genuine relationship and that the relationship was contrived. The Tribunal was not required to set out the whole of the content of the email nor, to particularise the whole document or set out particulars of matters subsumed within the clear particulars. The obligation is limited to information of the kind that would be the reason or part of the reason for affirming the decision under review.

58. In light of the particulars that were provided, which included that the marriage was not real, I do not accept that there was any failure to comply with the requirements of s.359A of the Migration Act in the present case. The words:

“clear particulars of any information that the Tribunal considers would be the reason, or a part of the reason, for affirming the decision that is under review”

59. requires that only clear particulars of the information objectively considered by the Tribunal to meet the test that it would be the reason or part of the reasons for affirming the decision under review is to be provided to the applicant. The whole of the email or full particulars of all the email are not required by s.359AA or s.359A of the Migration Act. The Tribunal met that objective consideration by the clear particulars provided of information that would be the reason or part of the reason for affirming the decision under review.
60. Mr Godwin of counsel sought to argue that because the parties were in a close relationship, that was a basis upon which the whole of the information should have been provided. Had the whole of the email been provided there would not have been clear particulars. Mr Godwin of counsel also submitted that there was inconsistency between the communication of 28 October 2014 and the communication of 2 July 2015 in relation to payments that the applicant lost the opportunity to address because the applicant was not provided with the whole of the communications. The alleged inconsistency in relation to payments was apparent on the particulars that were provided and the applicant clearly sought to take issue with the credibility of the information provided by the sponsor to the Department. The alleged inconsistency does not give rise to information enlivening the obligation under s.359A of the Migration Act
61. On the face of the material before the Court, the Tribunal also complied with its obligations under s.359AA and s.359A of the Migration Act in relation to the email dated 2 July 2015. The Tribunal provided clear particulars to the applicant that it was a fake marriage and this met the objective consideration by the Tribunal as to what would be the reason or part of the reason for affirm the decision under review.

62. I do not accept that the Tribunal was required to provide the whole of the content of the communication dated 2 July 2015 under the requirements of s.359AA and s.359A of the Migration Act. Further, I do not accept that the applicant was denied procedural fairness in the conduct of the review by reason of not having the whole of the email dated 2 July 2015, because of the sufficient disclosure of the same during the hearing.
63. This is a case where the falsity of the information provided by the applicant to the Tribunal in relation to the relationship was up in lights from the clear particulars that were provided by the Tribunal to the applicant in respect of the communications dated 28 October 2014 and 2 July 2015. Those particulars were a matter that had been communicated in respect of the first communication, in substance by the delegate to the applicant prior to the delegate's decision as referred to above. Clear particulars of the information in the communications dated 28 October 2014 and 2 July 2015 that would be the reason or part of the reason for affirming the decision under review by reason of undermining, negating or contradicting the applicant's claims were provided.
64. There was no failure to comply with s.359A of the Migration Act as the Tribunal complied with s.359AA of the Act. There was no jurisdictional error as alleged in ground 1 of the further amended application.
65. **Ground 2**
66. In relation to ground 2, Mr Godwin of counsel took the Court to the final paragraph in the reasoning in respect of the household being one of the criteria that must be considered in accordance with the requirements of reg 1.15A(3) of the *Migration Regulations 1994* ("the Regulations") and that the Tribunal had concluded:
- The Tribunal is not satisfied there is conclusive evidence before it that the parties have at any stage established a household together which would be expected if the parties were in a genuine, continuing and exclusive relationship.*
67. Mr Godwin of counsel also referred to the Tribunal in the context of the Tribunal's considering the commitment to each other stating that:

After considering the available evidence regarding this issue, the Tribunal is not satisfied there is conclusive evidence the parties were in an exclusive relationship with each other at the time Mr Ibrahim lodged his application for a Partner visa on 18 June 2013.

68. The Tribunal's reasons are not to be read with a keen eye for error. I do not accept that the Tribunal was introducing any standard of proof or onus upon the applicant. On a fair reading of the Tribunal's reasons as a whole, it is apparent that the Tribunal correctly understood the statutory requirements in relation to whether the applicant was the spouse of the sponsoring partner.
69. I do not accept that the Tribunal was introducing a requirement for the applicant to prove beyond reasonable doubt the criteria by use of the word "conclusive" in paragraph 76 or the reference in paragraph 86 of the Tribunal's reasons.
70. It is apparent that the Tribunal was evaluating the whole of the evidence in relation to those issues and the Tribunal expressed concerns in relation to the credibility of the applicant that were patently open on the material before the Tribunal.
71. The Tribunal also identified the information that was advanced by the applicant in support of the alleged criteria, and it was in that context that the Court is satisfied that the Tribunal did not apply any requirement that there be conclusive evidence in respect of the criteria for determining whether the applicant was a spouse of the sponsoring partner. The Tribunal did not misunderstand its statutory function and the decision was legally reasonable. No jurisdictional error as alleged in ground 2 is made out.

Conclusion

72. The further amended application is dismissed.

I certify that the preceding fifty-five (55) paragraphs are a true copy of the reasons for judgment of Judge Street

Date: 7 August 2017